



DOC Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
Q137-US7

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name _____Application Number
10/665,440Filed
September 17, 2003First Named Inventor
David M. SkinloArt Unit
1795Examiner
Cynthia Lee

Applicant requests review of the final rejection in the above-identified patent application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒ attorney or agent of record.
Registration number 42,491☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34. _____

Signature

Travis Dodd

Typed or printed name

818-833-2003

Telephone number

03/31/2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.

Submit multiple forms if more than one signature is required, see below*.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

David M. Skinlo

Serial No: 10/665,440

Filed: September 17, 2003

For: ELECTRIC STORAGE BATTERY
CONSTRUCTION AND METHOD OF
MANUFACTURE

Art Unit: 1795

Examiner: LEE, Cynthia

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Pre-Appeal Brief Request for Review

This is the second time that this application has been entered into the appeals process. As a result, the fees for filing the Notice of Appeal do not accompany this filing.

This communication is in response to the Office Action mailed on February 25, 2009 (the Office Action). Claim 66 is the only independent claim that remains pending. Claim 66 stands rejected under 35 USC §103 as being anticipated by U.S. Patent Publication number 2002/0001745 (Garstein) in view of U.S. Patent number 4,863,815 (Chang).

REMARKS

Claim 66 is the only pending independent claim. Claim 66 is directed to a method of constructing an electric storage battery. The method includes “winding (a) first electrode strip and (a) second electrode strip around (a) pin while the pin extends through a first end cap” and “fastening the first end cap to a case after forming the electrode assembly.”

The recent Supreme Court case of *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739 (2007) has provided new standards for obviousness rejections, **however, a proper obviousness rejection still requires that the cited art teaches or suggests every element of the claims.** This requirement has been set forth in case law with statements such as “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). There is nothing in the *KSR* opinion that directly or indirectly overturned the requirement that the cited art teach or suggest every element of a claim properly rejected as

obvious. Further, the Board of Patent Appeals and interferences continues to cite and apply this standard in decisions such as *Ex Parte H. Garrett Wada, and Matthew B. Murphy* (Appeal 2007-1925, decided on June 25, 2007). As a result, current law holds that an obviousness rejection is not properly supported unless the cited art teaches or suggests every element of the claims.

The cited art does not teach or suggest winding (a) first electrode strip and (a) second electrode strip around (a) pin while the pin extends through a first end cap” followed by “fastening the first end cap to a case after forming the electrode assembly.” Further, there is nothing in the record that indicates where this teaching can be found or suggested in the prior art. As a result, the cited art does not teach or suggest every element of the claims, and claim 66 is patentable over the cited art.

Rejection of claims 67-79

Claims 67-79 are also pending in the application. Each of claims 67-79 depends directly or indirectly from independent claim 66. Since independent claims 66 is believed to be in condition for allowance, claims 67-79 are also believed to be in condition for allowance.

Conclusion

The Applicant respectfully submits that legal error has been made by rejecting the pending claims for statutory double-patenting. For these reasons, allowance of claims 66-79 is respectfully requested.

Respectfully submitted



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